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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BEAU WADE FOX,

Defendant and Appellant.

D074355

(Super. Ct. No. SCD276090)

APPEAL from a judgment of the Superior Court of San Diego County, Peter L. Gallagher, Judge. Affirmed.

Ashley N. Johndro, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Beau Wade Fox of two counts of receiving stolen property—a trailer and an excavator. (Pen. Code,¹ § 496d.) He also admitted a prior strike conviction under the Three Strikes law for first degree burglary (§§ 459, 460, subd. (a)).

¹ Further unspecified statutory references are to the Penal Code.

The trial court sentenced Fox to a total prison term of eight years. This appeal proceeds in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

FACTUAL AND PROCEDURAL BACKGROUND

Prior to this case, Fox was convicted by guilty plea in 2015 of receiving a stolen boat. In 2016, he was convicted by guilty plea of a series of theft-related felonies, including vehicle theft and residential burglary.

The facts underlying the current case are as follows: Shasta Landscaping and BJ's Rentals, respectively, owned a flatbed trailer (trailer) and mini excavator (excavator), in Chula Vista. The trailer was stored in a gated yard, and the excavator was parked at a construction site. The items were accounted for right before a holiday weekend in February 2018.

On Saturday of the holiday weekend, Kile Geraci posted an online advertisement to sell an excavator. Rigoberto Ceja from Orange County, California, responded to the advertisement because he was looking to buy an excavator for his construction business. On Saturday and Sunday, Geraci communicated with Ceja about the proposed sales transaction and meeting in La Mesa; they exchanged text messages with each other.

On Sunday morning, Geraci met Fox in Chula Vista near where the excavator and trailer were located. The men exchanged text messages with each other throughout the holiday weekend.

On Sunday afternoon, Ceja and his wife drove to the designated meeting location set by Geraci in La Mesa, and the excavator was parked there on top of the trailer. Ceja began inspecting the excavator, Geraci arrived, Ceja spoke to Geraci, and then Fox

arrived. Geraci indicated that he had won the excavator in an auction and that documentation of ownership would be forthcoming. Ceja negotiated deal terms with Geraci and Fox, agreed to purchase the excavator for \$3,800 in cash, and Fox drove/loaded the excavator onto Ceja's semitruck. Ceja's wife, who was sitting in the cab of Ceja's truck, witnessed and took photographs of these events, including Fox loading the excavator and Geraci's driver's license.

After the excavator was loaded on Ceja's truck, Fox offered to sell Ceja the trailer as well. Fox said that he did not have any proof of ownership for the trailer, but he had been using it for a while without any problems; he joked that it may have been stolen. Ceja stated he would pay \$600 for the trailer if it could be delivered to his home in Orange County, and Fox agreed. Ceja and his wife returned home.

On Sunday night, Fox texted Geraci that they should not "get greedy" about the trailer since they were going to get "300 each" for it. Later that night, a police officer found the flatbed trailer illegally parked in La Mesa and had it towed away. On Monday, apparently not seeing the trailer, Fox texted Geraci: "Do we still have a trailer[?]" Geraci responded that he "did not touch it. It should still be there."

Soon thereafter, the respective owners discovered that the trailer (now impounded) and excavator (at Ceja's home in Orange County) were missing.

During their investigation, law enforcement officers seized and searched Geraci's cell phone, which contained incriminating text messages and led officers to coconspirator Fox.

The People charged Fox with two counts of receiving stolen property (for the trailer and excavator) and alleged that he had been previously convicted of felony vehicle theft and suffered a prior strike under the Three Strikes law. At trial, the jury heard testimony from the property owners, victims, and police officers, and received evidence of Fox's text messages, which clearly established a timeline of events.

Fox testified at trial in his own defense. He admitted he and Geraci were friends, the text messages were authentic, and he was present during the negotiations in La Mesa. He claimed, however, that he did not know the items were stolen and the text messages between him and Geraci were referring to a proposed sale of marijuana. The People impeached Fox's credibility with evidence of his prior theft-related criminal convictions.

The jury found Fox guilty of both charged counts. In a bifurcated proceeding, he admitted his prior conviction for felony vehicle theft and the strike prior allegation. At the sentencing hearing, Fox's counsel requested that the court exercise its discretion and strike Fox's strike prior, while the prosecutor argued that (1) the strike offense was recently committed and (2) Fox was on probation when he committed the current offenses. The trial court did not strike the strike prior and sentenced Fox to eight years in state prison, six years for count one (middle term of three years, doubled) and two years for count two (one-third of the middle term, doubled).

Fox appeals. His appellate counsel has filed a brief indicating that counsel has been unable to identify any arguable issues and instead asks this court to review the record for error as mandated by *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v.*

California (1967) 386 U.S. 738, the brief lists two potential issues to assist us in our independent review of the record:

1. Did the trial court err in refusing to strike Fox's strike prior (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497)?

2. Did the trial court err in denying Fox's motion in limine to exclude evidence of his prior convictions, which were used by the prosecution for impeachment purposes?

This court invited Fox to file a brief on his own behalf, and he did not respond.

DISCUSSION

We have reviewed the record in accordance with *Wende* and *Anders* and not found any reasonably arguable appellate issues. Fox has been represented by competent counsel on appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

DATO, J.